

AP-13

PATENT
Attorney Docket No. 101.0083-00000
Customer No. 22882

APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:) Confirmation No.: 4911
Gary K. Michelson, M.D.)
Serial No.: 09/991,247) Group Art Unit: 3738
Filed: November 15, 2001) Examiner: P. Prebilic
For: RATCHETED BONE DOWEL)

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Commissioner for Patents
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Sir:

REPLY BRIEF

In reply to the Examiner's Answer, Appellant submits the following remarks for consideration by the Board of Patent Appeals and Interferences.

I. The Supplemental Motivation Provided in the Examiner's Answer is Unsupportable.

In the Final Rejection dated January 30, 2004, the Examiner contended that it would have been obvious to combine the teachings of U.S. Patent No. 5,860,973 to Michelson ("Michelson '973") and U.S. Patent No. 6,294,187 to Boyce et al. ("Boyce") "for the same reasons that Boyce does the same; see column 1, line 56 to column 2, line 4 of Boyce." (Final Office Action, page 4, paragraph 1). In the Appeal Brief, Appellant presented arguments as to why the requisite motivation to support the combination was lacking. (See Appeal Brief, pages 5-7). These arguments are incorporated by reference herein. In the Examiner's Answer, the Examiner supplemented his motivation to include that it would have been obvious to make the Michelson implant out of the cortical bone/bioresorbable material composite of Boyce "as a binder to the hydroxylapatite [sic] particles of Michelson." (Examiner's Answer, paragraph bridging pages 3-4).

Reply Brief 1-4-05.doc

Noted
PBP
1-17-05